

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON LOCAL GOVERNMENT**

Call to Order: By **CHAIRMAN MARK NOENNIG**, on January 11, 2001 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Mark Noennig, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Jeff Mangan, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. John Esp (R)
Rep. Dennis Himmelberger (R)
Rep. Hal Jacobson (D)
Rep. Rick Laible (R)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Ken Peterson (R)
Rep. William Price (R)
Rep. James Whitaker (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 83, HB 111, HB 27 1/08/01
Executive Action: HB 130, HB 111

HEARING ON HB 27

Sponsor: Rep. John Musgrove, HD 91, Havre

Proponents: Doug Kaercher, Hill County Commissioner
Lynn Jerenka, concerned citizen of Rudyard
Bill Kennedy, Yellowstone County Commissioner
Gary Felstad, MACO

Opponents: Brenda Waller, Helena citizen

Opening Statement by Sponsor:

Rep. John Musgrove, HD 91, Havre, stated the bill allows the governing body of a county to pass an ordinance creating a curfew for minors that applies county wide except those areas in an incorporated city or town, amending section 7-32-2302 MCA. **{Tape : 1; Side : A; Approx. Time Counter : 0 - 3.7}**

Proponents' Testimony:

Doug Kaercher, Hill County Commissioner, This the bill will help to clear up late night extracurricular activities and has a do pass from MACO. This is a bill that prevents jeopardizing the public in areas that prove difficult to contain. Committee members may be in possession of a petition from some of his constituents, but it failed to inform you that the city of Havre is already under curfew. **EXHIBIT (loh08a01) {Tape : 1; Side : A; Approx. Time Counter : 3.7 - 5.4}**

Lynn Jerenka, Citizen of Rudyard, said that in her community there is a high rate of underage drinking and vandalism. She believes that a curfew would help the small community. The curfews implemented by the sports teams seem to work, and she urges the committee to favor this bill. **{Tape : 1; Side : A; Approx. Time Counter : 5.4 - 6.5}**

Bill Kennedy, Yellowstone County Commissioner, said he stands in support of this bill. **{Tape : 1; Side : A; Approx. Time Counter : 6.5 - 6.9}**

Gary Felstad, MACO, said he would encourage the committee to support this bill. Having experience as a law enforcement officer, he thinks this bill would help manage those types of activities that are sometimes difficult for local jurisdictions to handle. **{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 7.7}**

Opponents' Testimony:

Brenda Waller, Helena citizen, said that she isn't necessarily here to oppose this particular bill but would like the committee to think about the curfew issue generally. She is concerned with the

continuous restrictions we set on our young people. Many of the laws that we pass tend to hurt the good kids. She would like this committee to consider that vandalism is already against the law as well as underage drinking. When curfew laws are structured unwisely, young people are afraid to leave from parties because of the law. {Tape : 1; Side : A; Approx. Time Counter : 7.7 - 10.9}

Informational Testimony: none

Questions from Committee Members and Responses:

Rep. Laible asked how he envisions this working within the county. **Mr. Kaercher** said that they would look at the structure of Havre's law, which is 10:00 on weekends for those under 13, and 11:00 for 18 and under. **Rep. Laible** asked how they deal with the youth who are employed, or are involved with school functions that cause them to be out later than that given time. **Mr. Kaercher** said that the police didn't ever stop a juvenile who was walking the streets. If by chance they were coming home from a function, there is discretion officers can use.

Rep. Lee asked if there is already one curfew plan in use, how would they adopt another. **Rep. Musgrove** replied that there have to be some competent people who set laws at the local level, and they would look at the recent laws and parallel any incorporated cities. **Rep. Lee** asked if the sponsor would accept an amendment that stated the curfew times could be in conflict between the city and the county. **Rep. Musgrove** replied he would like to confer with the County Commissioner. There are probably many counties out there that don't have incorporated cities.

Rep. Price said that many of the communities have functions for graduation that go all night, and asked if the sponsor could see any trouble with administering those functions? **Rep. Musgrove** said the bill will be limited as to those types of activities.

Rep. Mangan asked if the commissioner would be imposing in an area that they may or may not want, and could he explain how the people of those areas would have the chance to testify or give their opinion. **Mr. Kennedy** replied that there isn't a curfew established outside the city limits in Yellowstone County. They would put the bill on the agenda and give the public a chance to give comments before the board were to vote on this. County Commissioners are going to have to work with people in the community. Young people attending supervised events have the right to stay out past the designated curfew because they are supervised by adults. **Rep. Mangan** asked what portion of the counties will be involved. **Mr. Kennedy** replied that they are concerned with where to place the curfew, because there would be a need of enforcement in those

areas. **Rep. Mangan** said that the 20-mile radius concerns him the most, where one farm may be included but one might not. **Mr. Kennedy** said the 20-mile radius is in the bill because the recreational areas need to be covered without covering the entire county. In law, he doesn't think a curfew can ever be enforced on private property.

Rep. Peterson asked if the bill is an enabling bill. **Mr. Kaercher** replied that they want the same ability as incorporated cities have. **Rep. Peterson** asked if the late night farmers will be subject to this law. **Mr. Kaercher** said enabling law enforcement to have the option of pulling underage persons over would also apply to farmers who are working late at night. **Rep. Peterson** said he is concerned about making sure that some legitimate exemptions are included in the laws.

Rep. Laible asked about the section relating to going from a county commissioner to a governing body of a county. Do the police have the discretion to enforce the provision? **Mr. Kaercher** replied that the discretion is an enabling tool for the counties and cities, therefore working fine for the counties.

Rep. Anderson asked if a county chose to establish a curfew in the recreation areas, would it drive the youth to another area. **Mr. Kaercher** replied that it could be a possibility.

Chairman Noennig asked if the language of the act has any requirements for adopting provisions to exercise discretion. He is concerned that it is an absolute liability offense, with no provisions for discretion, and language that could describe certain exceptions might need to be included. **Mr. Kaercher** replied the bill was taken from the incorporated cities and included counties, and they haven't looked at exemptions. **Chairman Noennig** asked if there are any exceptions that exist in the current cities and towns curfews. **Mr. Kaercher** said he isn't aware of any. *{Tape : 1; Side : A; Approx. Time Counter : 10.9 - 30}*

Rep. Lawson asked if they could explain the issue more clearly. **Mr. Kennedy** said this would enable legislation. This committee is getting more technical in examining what the pluses and minuses are. Cities across this state that have this curfew ordinance had the opportunity to have the public come forward with their responses as well as the law enforcement. As they passed the ordinance, they were asked to include many of the things asked here today within that ordinance. He doesn't think the committee wants to put all the components into this piece of legislation, such as who is exempted and so forth but to let local governments plan

those discrepancies according to their own individual communities.

Chairman Noennig asked if he had an objection to language that was broad enough, but also included the exemptions that the governing body deem appropriate. **Mr. Kaercher** said there would be no problem. *{Tape : 1; Side : B; Approx. Time Counter : 0 - 6.2}*

Closing by Sponsor:

Rep. Musgrove stated the law as it exists gives the counties authority, but the new language gives the authority for the entire county. In addition, it merely gives the authority to the proper government body to conduct hearings allowing the citizens of the county to either allow or disallow the curfew. The citizens ultimately have the control to regulate the decision, and he urges the committee to give this piece of legislation to the local governments so they can regulate this law. *{Tape : 1; Side : B; Approx. Time Counter : 6.2 - 8.8}*

HEARING ON HB 83

Sponsor: Rep. Gary Matthews, HD 4, Miles City

Proponents: none

Opponents: none

Opening Statement by Sponsor:

Rep. Gary Matthews, HD 4, Miles City said the bill repeals the naturalization statues under Montana code. The Montana Clerks are in charge of keeping the old naturalization records. The last time any Clerk of Court in the state of Montana did anything at all was 10 years ago. *{Tape : 1; Side : B; Approx. Time Counter : 8.8 - 11.3}*

Proponents' Testimony: none

Opponents' Testimony: none

Informational Testimony: none

Questions from Committee Members and Responses: none

Closing by Sponsor: Rep. Matthews closed. No comments

HEARING ON HB 111

Sponsor: Rep. Bob Lawson, HD 80, Whitefish

Proponents: Tom Jents, Planning Director for Flathead County
Dale Williams, Flathead County Commissioner

Johna Morrison, Lake County Planning Department
Patty Tresler, Lake County Commissioner

Opponents: none

Opening Statement by Sponsor:

Rep. Bob Lawson, HD 80, Whitefish stated the act will remove the limits from the Lake Shore Protection fees. The Lake Shore Protection Program was authorized by state law to protect our lakes and lake shore resources, and provide a process whereby local government was given the authority to review all construction activities. HB 111 eliminates the civic maximum fee while maintaining the criteria on which fee should be assessed. This will allow the local government to set fees that reflect the level of service demanded by the program. (See fiscal note). **EXHIBIT**(loh08a02){Tape : 1; Side : B; Approx. Time Counter : 11.3 - 15.3}

Proponents' Testimony:

Tom Jents, Planning Director for Flathead County, said Lake County and Flathead County are the only two counties aware of the ability to have lake protection regulations. This program affects all lakes, which includes 30 different lakes. It addresses anything that happens in a lake, or on a lake with a 20-foot diameter; this might include structures, homes, docks, etc... People have the ability to work on Flathead Lake in the off season, and must permit through the process. The value of lake shore is going up, therefore people need the protection this program offers. {Tape : 1; Side : B; Approx. Time Counter : 15.3 - 23.7}

Dale Williams, Flathead County Commissioner, said the board has generally found the existing fee structure that funds the lake shore protection program is inadequate as it relates to the cost of the administration of the program. The cost of this program should be borne by those who participate in the program, and there is no legitimacy in the costs that are now present in state law. A simple program is going to take a minimum of two to three hours. There is no need for this program to be subsidized by all the residents of the county, and that's what is happening today. He

would request a drop of the word "reasonably" in Section 2A. **{Tape : 1; Side : B; Approx. Time Counter : 23.7 - 28.4}**

Johna Morrison, Lake County Planning Department, presented and said Lake County issues about 100 permits for protection. A simple note is required for most permits; more complicated permits can take 5 to 10 hours. He feels the lake protection is absolutely necessary, HB 111 would allow local government to access these permit conditions. As it stands now, all consumers bear at least 75% of the cost of all permits. **EXHIBIT(loh08a03){Tape : 1; Side : B; Approx. Time Counter : 28.4 - 30}**

Patty Tresler, Lake County Commissioner, presented and said the program is necessary, because they have to supplement those programs in additional dollars to make sure that the water flow is maintained. **EXHIBIT(loh08a04){Tape : 2; Side : A; Approx. Time Counter : 0 - 1.6}**

Opponents' Testimony: none

Informational Testimony: none

Questions from Committee Members and Responses:

Rep. Carney asked why other counties don't have these programs. **Mr. Jents** said that he doesn't have an answer for that. The state law requires it to be done, and the local government has to see a need or desire. **Rep. Carney** asked if it is mandated by the county to have this program. **Mr. Jents** said the bill came out of Lake and Flathead Counties originally.

Rep. Newman asked what he thought about the "reasonably" being deleted from the bill. **Rep. Lawson** said that he hadn't taken this into consideration, but would work with anyone who encourages executive action. This will make the bill more clear and straightforward.

Rep. Mangan asked why the area set fees in the first place. **Rep. Lawson** replied that in 1975 the legislature passed a bill limiting the fee to \$10 for applications. **Rep. Mangan** asked what local governing body sets the fees. **Mr. Jents** replied the local governing body responsible would be the city council of the area in which the lake is located.

Rep. Peterson asked what triggers the committee. **Mr. Jents** said they dealt with about 200 permits in 2001. Anyone who wants to do work in or on the lake shore that is construction driven would talk to their office. Some people get ahead of the game, and start

their projects, but not very many. **Rep. Peterson** said the one thing he would draw attention to is the fine for an after-the-fact permit, which is \$500 in his county. If there is a million dollar property out there, an after-the-fact permit isn't a very large deterrent. The violation isn't stiff enough. **Mr. Jents** said they don't have the ability to change the violation.

Rep. Younkin asked if a person who started a construction project but didn't qualify for a permit would have to restore the land to its original state. **Mr. Jents** said they work with restoration, but try not to go through the legal process. Their job is to be proactive, working with the people.

Rep. Laible asked if the 200 developments done on lake shore were the only thing their department handled. **Mr. Jents** replied that they are a full service dealing with 100 sub-divisions and zoning issues. **Rep. Laible** asked if the other projects' fees are based on the true cost of the program. **Mr. Jents** said not the true cost, but fairly close. There is a feeling in the office that they are formed as a planning office, and this is an administrative or permit program. The permit program is closely kept to a cost base. General planning issues are still the local government's concern, and paid by the local taxpayers. **Rep. Laible** asked what the range would be to support the 10% they need. **Mr. Jents** said there are simple projects that can be done for \$25. Not all projects are extremely costly, and there are many variables that impact a project. *{Tape : 2; Side : A; Approx. Time Counter : 1.6 - 17}*

Closing by Sponsor:

Rep. Lawson stated that it is the local government's responsibility and authority. *{Tape : 2; Side : A; Approx. Time Counter : 17 - 20.6}*

EXECUTIVE ACTION ON HB 130

Motion: **Rep. Newman** moved that **HB 130 DO PASS**

Motion/Vote: **REP. LAWSON** moved that **HB 130 BE AMENDED. Motion carried unanimously.** *{Tape : 2; Side : A; Approx. Time Counter : 20.6 - 28}*

Discussion: **Rep. Lawson** said he would like **Ms. McClure** to clear up the amendment. **Ms. McClure** stated that Governor Racicot's budget created a different way of funding libraries. There is no fiscal note impact, because there aren't any funds within the proposed budget. This bill further explains how to distribute the funds already existing or finding a different way to fund them.

Motion/Vote: REP. NEWMAN moved that HB 130 DO PASS AS AMENDED. Motion carried 17-0. {Tape : 2; Side : A; Approx. Time Counter : 28 - 28.3}

EXECUTIVE ACTION ON HB 83

Motion: Rep. Lawson moved that HB 83 DO PASS. {Tape : 2; Side : A; Approx. Time Counter : 28.3 - 30}

Discussion: Rep. Peterson moved to postpone HB 83. {Tape : 2; Side : A; Approx. Time Counter : 30 - 31}

EXECUTIVE ACTION ON HB 111

Motion/Vote: REP. LAWSON moved that HB 111 DO PASS. Motion carried unanimously. {Tape : 2; Side : B; Approx. Time Counter : 0 - 5}

ADJOURNMENT

Adjournment: 5:00 P.M.

REP. MARK NOENNIG, Chairman

PATI O'REILLY, Secretary

MN/PO

EXHIBIT (loh08aad)